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REMARKS

Claims 2-13 and 15-19 are pending.

Claims 2-4, 15 and 18-19 are allowed.

Claims 6, 8, 11 and 17 are objected.

Claims 5, 7, 9-10, 12-13 and 16 stand rejected.

Claims 5-8, 16 and 17 have been amended.

Claim 20 is new.

Claims 6, 8, 11 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant has amended claims 8 and 11 to be rewritten in independent form as proposed by the Examiner. Claims 8 and 11 are therefore considered to be in a condition for allowance.

Claim Rejections - 35 U.S.C. § 102(e)

Claims 5, 7, 9-10, 12-13 and 16 stand rejected under 35 U.S.C. 102(e) with reference to Herbert, et al. U.S. Patent No. 6,088,749.

The Applicant traverses the rejection; however the Applicant amends claims 5-8, 16 and 17 to further clarify the subject matter and to facilitate bringing this case to allowance.

Amended claim 5 recites: a method of tunneling any related data-, control-, or routing-related protocol through a generic Internet protocol (IP) transport, the method comprising:

- creating a base class library including plural defined source and header files, the base class library further including base class constructors of virtual, copy, and assignment, and generic access methods;

- choosing a transport protocol for transparently routing a user protocol over the transport; and

- providing a mechanism for deriving a transaction-based protocol-specific class that is compatible with the base class library, the transaction-based protocol-specific class further being derived based in part on the chosen transport protocol, wherein the transaction-based protocol-specific class is derived using an object-oriented inheritance based mechanism.

The Hebert reference discloses a protocol that communicates between a host and a telecommunication switch. Hebert's system does not disclose or utilize tunneling. The words tunnel or tunneling are not even mentioned in this reference. Similarly, the Hebert reference does not utilize the Internet protocol and in fact the reference does not even mention the use of the Internet Protocol. Furthermore, Hebert does not disclose the derivation of a transaction-based protocol-specific class. Rather Hebert provides for a user to define a separate finite state machine for each port provided by the switch. The finite state machines include predetermined messages that are selected under predetermined conditions (See the Abstract in the Hebert reference, for example). Figures 8A, 8B, 8F and 8G in Hebert show state/message flow diagrams, not a method for "providing a mechanism for deriving a transaction-based protocol-specific class that is compatible with the base class library".

Additionally, amended claim 5 recites deriving a transaction-based protocol-specific class that is compatible with the base class library, using an object-oriented inheritance based mechanism. The base class may contain virtual functions that are then defined by the protocol-specific class, as described beginning on page 11, line 23 of the application. The use of a base class mechanism with object oriented inheritance is a different and unique method of deriving software behavior in messaging systems. Hebert does not provide such a mechanism, but instead describes a common method of event-driven finite state machine processing for a determination of software behavior. Furthermore, Hebert does not disclose base class constructors of virtual, copy, and assignment, and generic access methods that are recited in claim 5. Therefore, a withdrawal of the rejection based upon the Hebert reference under 35 USC 102e is requested.

Previously presented claim 9 recites: an application programming interface for transparently routing data between hosts in an Internet protocol (IP) transport, the interface comprising:

- a message buffer data structure defining a protocol-generic parent class, message, source-address and data fields for a chosen transport protocol;
- a message creation mechanism for creating a message and adding it to the message buffer data structure; and
- a protocol creation mechanism for deriving a protocol-specific child class based on the chosen transport protocol that renders new protocol-specific sub-fields of said protocol field of said message buffer data structure.

Lines 54-57 of Col. 9, immediately following the section cited by the Examiner, provide that "the programmable switch of the present invention enables a user to define and assign a signaling protocol, either 'standard' or custom in nature, for performing various switching functions to accommodate any of the above requirements". Hebert discloses a programmable switch to define and assign the signaling protocol including a "protocol development environment which enables a user to define a separate finite state machine for each port provided by the switch" (Abstract). This is clearly distinguishable from the present invention, which is stateless. Nowhere does Hebert disclose deriving a protocol-specific child class based on the chosen transport protocol. The additional section cited by the Examiner at col. 12, lines 21-25 also does not disclose the features of claim 9. Therefore, a withdrawal of the rejection based upon the Hebert reference under 35 USC 102e is requested.

Claim 16 has been amended to include features of claim 8 that has been indicated as being allowable. Therefore, claim 16 is also considered to be in a condition for allowance for the same or similar reasons as amended claim 8.

A rejection of Applicant's claims under a 35 USC 102e rejection requires that every element of the claims be described in the referenced art. Therefore, a rejection under 35 USC 102c based upon the Hebert reference should not be maintained with respect to the claims as previously presented and as amended herein, for the reasons discussed above.

Any statements made by Examiner that are not addressed by Applicant do not necessarily constitute agreement by the Applicant. In some cases Applicant may have amended or argued the allowability of independent claims thereby obviating grounds for rejection of the dependent claims, for example.

For the foregoing reasons, reconsideration and allowance of claims 2-13 and 15-20 of the application as amended is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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